



Comhshaol, Oidhreacht agus Rialtas Áitiúil  
**Environment, Heritage and Local Government**



Circular Letter PD 1/08

26 February 2008.

To City and County Managers, Town Clerks and Directors of Service (Planning).

### **Taking in Charge of Residential Developments/ Management Arrangements**

A Chara,

I am directed by Mr. John Gormley, T.D., Minister for the Environment, Heritage and Local Government, to refer to Section 180 of the Planning and Development Act 2000 which places a legal obligation on planning authorities to take in charge residential developments, finished or unfinished, where certain conditions have been met.

#### ***Previous Policy Advice***

This circular letter updates the earlier policy guidance issued by the Department and replaces circular letters PD 1/06 and 5/06 which directed planning authorities to develop a policy on taking in charge and pending further examination, clarified the limited circumstances in which a planning authority should attach planning conditions in relation to management companies.

#### ***Each Authority to Develop a Policy on Taking in Charge***

In January 2006, each planning authority was asked to establish, as a priority, a policy on taking charge which should be approved by the members of the authority, and reported on to those members on a regular basis and at least annually.

The Department established a Working Group in August 2006, representative of the Department, local authorities, architects, planners, the Irish Home Builders Association (IHBA) and the National Consumer Agency (NCA) to consider issues in relation to taking in charge and management companies. This policy advice is based on the outcome of the deliberations of that group.

All planning authorities are now required to develop or update, as appropriate, their policy on taking in charge by the end of June 2008 on the basis of the framework, and wider housing and planning policy guidance, as set out at the annex to this circular.



### ***Framework for a Comprehensive Taking in Charge Policy***

The core principles underpinning the framework for taking in charge, which must be reflected in each authority policy on this matter, are set out below:

- A statement of the facilities that will be taken in charge and the maintenance services that will be provided;
- The issue of taking in charge must be addressed at the pre-planning stage with the approved design facilitating the taking in charge of core facilities;
- The planning authority's construction and design standards for residential areas will be set out;
- Developers will be required, through the development management process /permission, to complete residential developments to a standard that is in compliance with the planning permission granted;
- Planning authorities must take all necessary measures in this regard in particular through securing adequate bonds, inspection of construction and enforcement action when necessary;
- The procedures for taking in charge will begin promptly on foot of a request by the majority of the residents in the development or by the developer, as appropriate. Protocols, including time frames, must be set out by planning authorities to respond to requests for taking in charge;
- Where there are core facilities in existing residential developments which were approved by the planning authority on the basis that they would remain private and be maintained by a management company, these must be taken in charge if the majority of residents request it;
- Planning authorities must not attach management companies as a condition of planning in respect of traditional housing estates, save in very exceptional circumstances, as set out in the annex to this circular;
- Planning authorities should only attach planning conditions requiring management arrangements in relation to certain shared facilities in the newer type of mixed residential development in limited circumstances, as set out in the annex to this circular;
- In relation to older estates, priority must continue to be placed on resolving those estates that have been left unfinished /not taken in charge for the longest period.

### ***Ministerial Guidelines under section 28 of the Planning and Development Act***

The main elements of the policy guidance contained in this circular letter will be incorporated in the new Sustainable Residential Development Guidelines (currently available for public consultation), which will be issued under section 28 of the Planning and Development Act 2000 later this year.

### **Monitoring and Review**

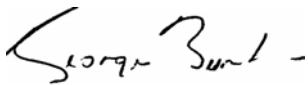
The planning authority's policy on taking in charge is to be made available to the public, published on its website and should continue to be reported on to the elected members on a regular basis and at least once annually.

As part of the overall review and update of the local government service indicators a new indicator in relation to taking in charge is being introduced from 2008 onwards. This will provide benchmark data in 2009 for monitoring the taking in charge process, and in particular the priority being accorded by individual authorities to the taking in charge of unfinished or legacy estates.

This information will allow the Department to review the ongoing work of planning authorities in this area and help determine whether additional policy advice on this matter is required.

Queries in relation to this circular should be addressed to either Ms. Marian O'Driscoll (01 8882811): [marian\\_o'driscoll@environ.ie](mailto:marian_o'driscoll@environ.ie) or Mr. David Hanlon (01 8882810: [david\\_hanlon@environ.ie](mailto:david_hanlon@environ.ie)).

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Annex to Circular Letter PD 1/08

Framework for a Comprehensive  
Taking in Charge Policy

February 2008

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## 1. Taking in Charge Policy: Overview

### 1.1 *Legislative framework*

Section 180 of the Planning and Development Act 2000, requires planning authorities to commence taking in charge procedures in relation to residential developments, finished or unfinished, where certain conditions have been met. Section 34(4)(i) of the Act provides the legal basis for a planning authority to attach to a planning permission “conditions for the maintenance or management of the proposed development (including the establishment of a company or the appointment of a person or body of persons to carry out such maintenance or management)”.

### 1.2 *Policy framework*

The Department’s February 2007 statement on Housing Policy “*Delivering Homes, Sustaining Communities*” sets out a number of actions focused on building sustainable communities. These include building on the current suite of best practice guidance on urban planning, and developing new comprehensive planning guidelines on interrelated housing and planning matters to address emerging needs. The new guidelines include:

- a) Guidelines on Quality Housing for Sustainable Communities (March 2007);
- b) Guidelines for Planning Authorities on Design Standards for New Apartments (September 2007);
- c) Updated Residential Density Guidelines (*Draft Guidelines on Sustainable Residential Development in Urban Areas currently available for public consultation*); and
- d) Guidance in relation to a framework policy for the taking in charge of residential developments by planning authorities (February 2008).

Accordingly this document forms part of an overall policy on building sustainable communities and fulfils the commitment in “*Delivering Homes, Sustaining Communities*” outlined at d) above by setting out a framework for a comprehensive and proactive taking in charge policy by planning authorities.

### 1.3 *Previous Departmental Guidance*

Circular Letter PD 1/06 directed that all planning authorities establish a policy on taking in charge which, would provide for a number of elements including the completion of residential developments to specified standards, the provision of adequate security by the developer, enforcement action in relation to uncompleted residential developments and prompt response to taking in charge requests. The policy was to be approved by the members of the authority and reported on to those members on a regular basis and at least once annually. Circular Letter PD 5/06 clarified the limited circumstances in which a planning authority should attach planning conditions relating to the establishment of management companies.

This document is a restatement and further development of those circulars, which it replaces. The key elements of the new framework are as follows:

- Statement of the facilities to be taken in charge and of the maintenance services to be provided by the authority;
- Measures to ensure the satisfactory completion of residential developments by developers;
- Protocol to be followed in response to a request for taking in charge;
- Planning conditions relating to management arrangements;
- Dealing with requests in relation to older residential estates.

## **2. Taking in Charge**

### 2.1 *Facilities to be taken in charge*

Taking in charge involves planning authorities taking control of the following services and public areas associated with a particular development:

- Public roads and footpaths;
- Unallocated surface parking areas;
- Public lighting;
- Fire services including fire hydrants;
- Public water supply, foul and storm water drainage;
- Wastewater treatment plants and associated buffer zones;
- Potable water treatment plants and any associated protection zones;
- Public open spaces;
- Playgrounds, where these are required by condition of a planning permission as facilities for public use.



## 2.2 *Maintenance services*

The maintenance services that will be provided by the authority following the completion of the taking in charge process include the following:

- Maintenance of all roads and footpaths, including unallocated street car parking;
- Maintenance of water mains and drainage services;
- Repair and reinstatement of roads, footpaths and landscaped areas resulting from repair and/or maintenance of underground services (water mains and drainage services) carried out by the authority;
- Road sweeping and cleaning services of the principal public routes within the residential development;
- Upkeep and maintenance of all public lighting installations including non-standard light fittings;
- Maintenance of public open spaces (that is, spaces to which the general public have access), not including grass cutting or maintenance of grass verges, incidental ornamental/landscaped areas, shrubberies or playgrounds, unless such playgrounds are required, as a facility which will be available to the general public, by the planning authority by way of planning condition. (*Many authorities also include grass cutting of public open spaces, or the provision of grants to residents' associations towards the costs of grass cutting, as part of their maintenance services and this is a welcome contribution to the upkeep and maintenance of residential areas*);
- Upkeep and maintenance of all surfaces, fixed elements and rigid play equipment in play lots and playgrounds in cases where the playground or play lot was required by condition of a planning permission.

## 3. **Measures to ensure satisfactory completion of residential developments**

### 3.1 *General*

In order to implement a comprehensive taking in charge policy, it is essential that planning authorities take all steps to ensure that developers complete the residential development to taking in charge standard within the duration of the planning permission (see sections 3.2 – 3.8). This will involve a comprehensive and integrated approach to dealing with the planning process for residential development, to include a number of key elements as set out in this section.

### 3.2 *Adoption of standards for external works*

It is essential that public roads, footpaths, services and open spaces in residential developments are finished by the developer to a standard acceptable to the planning authority for taking in charge and long term maintenance. Planning authorities must specify or reference their construction and design standards in their taking in charge policy.

The Department's Recommendations for Site Development Works for Housing Areas (1998) is currently being updated to reflect a more sustainable approach to site development works. The construction industry will be consulted as part of this process. It is intended that revised recommendations for site development works will be available in 2008. The construction standards set out in the current document are still generally applicable (although the section on public lighting requires updating), and construction standards adopted by planning authorities should as a minimum conform to these standards.

However, the design principles and standards in the 1998 publication require significant revision. The residential road design standards in the 1998 publication relate to the more traditional housing layouts and are not flexible enough to accommodate the higher densities required for the delivery of more compact and sustainable communities. Layouts which seek to ensure very low traffic speeds and greater priority for pedestrians and cyclists in residential areas should be encouraged, which would mean the adoption of standards other than those contained in the publication in particular circumstances.

The Department's commitment to build sustainable communities necessitates the incorporation of urban design principles and more contemporary standards in the design and layout of roads and streets, particularly in higher density schemes. The Department's Guidelines on *Sustainable Residential Development in Urban Areas*, currently available as a consultation draft, make reference to such contemporary standards. The new guidelines will:

- Facilitate the development of sustainable communities through effective planning and the provision of necessary supporting services and amenities;
- Help achieve the most efficient use of urban land through housing densities that are appropriate to the location involved and availability of supporting services and infrastructure, particularly transport; and

- Set high standards in terms of space and facilities to meet needs into the future.

The draft guidelines are accompanied by a design manual, “*Sustainable Residential Design, a best practice guide*”, which contains many examples of good practice in the design and layout of contemporary residential areas in Ireland and will be a valuable reference document. Further advice on the design and layout of roads in new residential developments is also available in the Traffic Management Guidelines (2003) jointly issued by the Department of the Environment, Heritage and Local Government, the Department of Transport and the Dublin Transportation Office.

In formulating their design standards, planning authorities should therefore take into account emerging best practice and should consult the guidance documents referred to<sup>1</sup>. Many planning authorities have published updated standards for the layout and design of residential areas in their Development Plans and Local Area Plans. For example, Kilkenny County Council has included detailed design guidance on road layouts for residential areas in the Local Area Plan for the Western Environs of Kilkenny City. Similarly Wexford County Council and Dublin City Council have included detailed guidance on the design and layout of roads in new housing areas in their Development Plans.

### 3.3 *Application of standards*

All residential developments granted planning permission must at a minimum comply with the standards adopted by the planning authority.

In general standards should cover:

- The construction of roads, footpaths, public lighting, walkways, grass verges etc;
- The installation of drainage services and water mains, including a specification of the regime of testing to which these services must conform;
- The location of services provided and maintained by other service providers (telephone, cable television, broadband services etc.) in relation to those provided and maintained by the authority;

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<sup>1</sup> See also UK publication “Manual for Streets”, June 2007 (available at [www.dft.gov.uk/pgr/sustainable/manforstreets](http://www.dft.gov.uk/pgr/sustainable/manforstreets)) and Urban Design Compendium”, Lloyd-Davies, 2007 (<http://www.urbandesigncompendium.co.uk/>).

- The quality of planting and seeding of landscaped areas, required treatment of public boundaries such as walls and fences, as well as specifications for particular elements in landscaped areas, such as play equipment, where these are to be provided.

The standards adopted by the planning authority must ensure that the quality of the residential development delivered is to a high standard.

#### 3.4 *Early identification of the areas to be taken in charge*

Authorities must address the taking in charge issue at pre-application consultation stage, when the type of residential development and the standards proposed can be discussed. Applications for residential development should delineate the area that would, in accordance with this document, potentially fall to be taken in charge on the site layout map. It is envisaged that, generally, certain core services will always be taken in charge (see section 2.1) and planning authorities must ensure that the design of the approved development will facilitate this by separating the areas/facilities that will be taken in charge from those that will not. Sewers and water mains should not be located under landscaping or allocated parking area that will not be taken in charge.

#### 3.5 *Appropriate planning conditions*

Section 34 of the Planning and Development Act 2000 provides the legislative basis for attaching conditions to planning permissions. Appropriate conditions must be attached to grants of permission for residential development in relation to:

- The giving of adequate financial security (S.34(4)(g)) and the length of time the security must remain in place;
- The facilitation of inspections by the planning authority;
- The phasing of the development, if appropriate (S.34(4)(h));
- The completion of the development in accordance with specified standards;
- The evidence to be produced by the developer to demonstrate that the residential development has been completed to the appropriate standards (see section 4.2) and the time period for the production of such evidence;
- The maintenance by the developer of the residential development until taking in charge; and
- The vesting in the authority by the developer, upon taking in charge, of the areas to be taken in charge.

As some of these issues will be covered in the planning authority's taking in charge policy - e.g. the standards to be met, the evidence to be produced by the developer to demonstrate completion - it may be possible to group conditions under the general heading of compliance with the planning authority's taking in charge policy.

Sample planning conditions are set out at **appendix 1**.

#### Conditions in relation to financial security/bond

As stated above, in the case of residential development, planning conditions must require the giving of sufficient security prior to commencement of development. Planning authorities must ensure that they are in a position to draw down the security in cases where a developer fails to satisfactorily complete a residential development, or phase of a development, within the specified period.

Where a development is completed in accordance with the planning permission the security should be released without undue delay.

It is a matter for the planning authority to determine both the level of the security and the type of security (e.g. the lodgement of a bond from a financial institution - e.g. bank, insurance company, building society - a cash lodgement or a letter of guarantee from the Construction Industry Federation) that will be required for each residential development. The amount of the security, and the terms on which it is required to be given, must enable the planning authority, without cost to itself, to complete the necessary services (including roads, footpaths, water mains, sewers, lighting and open space) to a satisfactory standard in the event of default by the developer. The condition must require that the lodgment of the security be coupled with an agreement that would empower the planning authority to realise the amount of the security at an appropriate time and apply it to meet the cost of completing the specified works. Planning authorities must also ensure that, when using time-limited bonds, the bond is of sufficient duration to allow them time to inspect the development after the expiration of permission and still call in the bond if necessary. The duration of planning permission and any approved extension of that duration plus 2 years is the recommended minimum duration.

A security condition must also provide for the recalculation of the amount specified in the condition by reference to the House Building Cost Index (or the Consumer Price Index) if the development to which the permission relates is not commenced within a specified period after the granting of the permission. The bond obtained should be applied to carry out any outstanding work where needed to ensure that the development is completed to a satisfactory standard.

Attached as an example at **appendix 2** is a sample wording for a bond from a financial institution based on one used by a planning authority.

#### Conditions in relation to phasing of the development

Planning authorities should consider whether it is appropriate to attach a condition regarding the phasing of the development in order to ensure that residents do not have to live in uncompleted residential developments for lengthy periods. The Development Management Guidelines<sup>2</sup> state that:

- A phasing condition could include requirements relating to the completion of roads, public lighting, open spaces, etc. which are necessary for, or ancillary to, the completed units in each phase.
- Such an arrangement would permit the security for satisfactory completion to be related to a particular phase or phases of the development and thus enable completion of sections of the scheme to be advanced while, at the same time, facilitating the developer by obviating the need for a very large security appropriate to the entire development.

In devising any phasing arrangement planning authorities must ensure that main sewers, surface water drainage systems, main distributor roads, etc., are completed at an appropriate stage so that the first and each subsequent phase will, on completion, be fully serviced and independent in the event of other phases not proceeding.

### 3.6 *Inspection of construction*

Ensuring that residential developments are completed in accordance with the planning permission is an essential part of a comprehensive taking in charge policy.

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<sup>2</sup> Development Management Guidelines for Planning Authorities, section 7.13 (June 2007)

It is important that the construction of the development be regularly inspected by the planning authority to ensure satisfactory completion in accordance with the permission. It is also necessary for the planning authority to satisfy itself, when the developer has ceased construction or notified the planning authority that construction is complete, or after the planning permission has expired, that the development is properly completed in line with the planning permission and, where it is not properly completed, to take early and effective enforcement action.

Regular inspections are particularly important in the case of residential developments to ensure that if issues of non-compliance arise, the planning authority is in a position to take appropriate enforcement action so that the obligation to rectify shortcomings does not fall to be funded by the planning authority.

The following procedure for inspecting the construction of residential developments, used by Fingal planning authority, is included as an example of good practice. It is recommended that such a procedure, or one similar to it, if not already in place, be adopted by planning authorities.

Example	
(i)	On receipt of the Commencement Notice a Taking in Charge file is opened for each residential development;
(ii)	The commencement notice and all requests for inspections and other correspondence arising from the process are formally acknowledged;
(iii)	A calendar of inspections, tied to the projected completion of the development, including such phasing as may be conditioned in the Grant of Permission or agreed by the planning authority, is set out in the Taking in Charge file at the outset;
(iv)	The record of such inspections and/or testing is held on the Taking in Charge file;
(v)	Failure to adhere to programmes, to notify the authority in relation to inspections and testing or other such breaches is referred for Enforcement Action commencing with the issuing of the statutory Warning Notice, copies of which are held in the Taking in Charge file;
(vi)	The record of such Final Inspections and/or Testing is kept on file and the file is retained by the authority for future reference.

Planning authorities should be in a position to respond to queries e.g. from purchasers, residents associations or management companies as to whether a

development or particular elements of it have been completed in accordance with the planning permission.

### 3.7 *Enforcement action*

To avoid the necessity for calling in the security given and having to complete residential developments themselves, it is essential that planning authorities pursue early enforcement action in the case of developments that are not completed in accordance with the terms of the permission. Planning authority enforcement protocols in such cases should include details of appropriate enforcement procedures that will be pursued against developers who do not satisfactorily complete residential developments and should also specify time frames in relation to enforcement action.

Inspection of the development should take place as soon as possible after the expiration of the permission or notification by the developer that the development is complete. All available legal remedies under the 2000 Act, as amended, should be used to enable outstanding matters to be resolved without delay.

The adoption of clear procedures and protocols will facilitate the pursuit of successful enforcement action, in particular against developers who persistently fail to comply with conditions attached to planning permissions.

### 3.8 *New powers available to planning authorities to refuse planning permission*

Appropriate use should also be made of the amended section 35 of the Planning and Development Act 2000. This provision gives a new power to planning authorities, to refuse planning permission, without recourse to the High Court, to a developer who has substantially failed to comply with a previous planning permission. It reversed the burden of proof applying under the previous provision, under which the planning authority had to apply to the High Court for consent to refuse permission in such circumstances. It is important that developers are made aware at the pre-application consultation stage of the potential consequences of the non-compliance with a planning permission.



#### 4. Responding to a request for Taking in Charge

##### 4.1 *Adoption of a procedure/protocol*

As part of their taking in charge policy, authorities must adopt a procedure or protocol for the actual taking in charge of a residential development in response to a request from either a developer or a majority of the residents<sup>3</sup>. It is recommended firstly that a designated officer be nominated as the coordinator/liaison person: this person will ensure, among other things, that all correspondence, whether from residents or developers, is acknowledged and replied to promptly. The protocol adopted should clearly set out each step in the taking in charge process and accompanying time frames. The taking in charge protocol should also specify the documentation/evidence that will be required from the developer to show that the development is satisfactorily completed: a sample list of acceptable evidence is attached at **appendix 3**.

##### 4.2 *Sample protocol*

The sample protocol below is based on a Dublin City Council/Irish Home Builders Association (IHBA) protocol, for dealing with taking in charge in response to a request from a developer. The time limits in the sample protocol are the recommended standard to be followed by planning authorities, that is a total of 18 weeks from the submission by the developer of the request/necessary documentation to the commencement of the actual taking in charge procedure (subject to the proviso that the developer completes any outstanding works within the 4 week period set out at (iii) of the protocol).

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<sup>3</sup> The majority of the owners/occupiers who are qualified electors – section 180(1) of the Planning and Development Act 2000.

#### Example

- (i) Within 2 weeks from receipt of the request for taking in charge, the planning authority will acknowledge receipt of the request and the "as constructed drawings" and any way leaves submitted.
- (ii) Within 8 weeks of receipt of the request for taking in charge, the planning authority will in conjunction with the developer, carry out a comprehensive inspection of the development or phase of development; and notify the developer in writing of all outstanding issues remaining to be addressed in relation to the satisfactory completion of the development.
- (iii) The developer will within 4 weeks of receipt of details of outstanding issues from the planning authority, arrange for completion of the said works, and notify the authority when works are completed. If works cannot be carried out within that period the developer must notify the authority as to when the works will be completed.
- (iv) The authority will, within 4 weeks of being notified of completion of the works at (iii), arrange for final inspection of the development to determine the satisfactory completion of the said outstanding issues as identified at (ii).
- (v) Upon final inspection of the development or phase of the development and satisfactory completion of the works, the planning authority will release that element of the security lodged to secure completion of the works and proceed to take the development or phase of the development in charge. All reasonable efforts shall be utilised to ensure that formal procedures are completed for the taking in charge process with minimum delay.
- (vi) The developer will vest in the planning authority (at no cost to the authority) the public areas, including open spaces, which have been designated for taking in charge.
- (vii) Following the decision to take the development in charge, details will be entered in the planning register. A Manager's Order will then be prepared with map attached, stating that the area defined on the map has been taken in charge and this will be recorded in the register (which is available for public inspection).

## 5. Planning conditions relating to management arrangements

### 5.1 *Traditional housing estates*

Management companies must not be required in planning conditions for traditional housing estates (that is estates of houses with individual private gardens) except in the most exceptional circumstances, e.g. to maintain a specific facility in that estate which is for residents use only (such as a private playground) or in the case of holiday homes.

### 5.2 *Multi-unit structures*

Management companies are normally necessary for multi-unit structures (i.e. apartments and/or apartments and duplex houses) of four dwellings or more. In such developments management companies are necessary to maintain:

- *shared exteriors* of buildings: e.g. external walls and roofs;
- *shared internal areas*: e.g. stairways, lifts and lobbies.

Subject to further legislation in this area arising from a forthcoming report of the Law Reform Commission, provision for property management arrangements (e.g. the establishment and operation of a management company) for developments containing multi-unit structures, is made in the legal documentation underpinning the development and the sale of units.

Nonetheless, it may be appropriate for a planning authority to attach a condition in relation to management company/other management arrangements in the case of such structures.

### 5.3 *Other instances where it may be appropriate to condition management arrangements*

The circumstances where a planning authority might consider attaching a planning condition relating to the maintenance or management of a development are limited and may include the following:

- (a) In developments comprising houses, apartments, duplexes or a mix of any of these, to maintain *external private shared facilities* that are exclusive to the development (e.g. *boiler houses, switch rooms, bin storage areas communal private gardens/private open spaces, private playgrounds*), where a management company is considered essential having regard to the nature and scale of such facilities.
- (b) In developments comprising houses, apartments, duplexes or a mix of any of these, to maintain facilities which though not necessarily inaccessible to the general public, *are not required to be taken in charge, in accordance with this document*, e.g. facilities such as highly landscaped open spaces, allocated car park spaces - see section 2.1.

In the case of (a) and (b) above the planning authority should consider whether a management company would be necessary having regard to the extent of the facilities to be maintained and the extent of the maintenance that will be required: other management arrangements could be more appropriate including residents associations and voluntary co-operation.

(c) To maintain *holiday home developments*, that is, residential developments where planning permission was applied for, or granted, on the basis that the residential units are holiday homes, or residential developments used entirely for short-term letting.

## **6 Dealing with requests relating to older estates**

### **6.1 *General***

The adoption and proactive implementation of a taking in charge policy based on the framework set out in this document, in relation to residential developments to be built in the future, will ensure that they are completed in accordance with the planning permission within the lifetime of the permission, or, if they are not, that early enforcement action is taken or the bond is called in, so that the necessary works are carried out promptly. Also, as the prompt production of documents/evidence by the developer to show that the residential developments is completed properly will be a condition of the planning permission, there should be no delays in the production of such documentation in the future. Accordingly, in the future the planning authority should be in a position to take in charge residential developments promptly upon request to do so.

### **6.2 *Assessing/categorising requests***

In relation to those requests for taking in charge estates currently on hand where the planning permission has expired, planning authorities should as soon as possible, if they have not already done so, assess the status of such estates. These will generally fall into the following categories:

- Estates which have been completed to taking in charge standard but not yet taken in charge;
- Estates which have not been completed in accordance with the terms of the permission and where enforcement action/calling in the bond is still possible;
- Estates which have not been completed in accordance with the terms of the permission and enforcement action was not taken within the specified period;
- Estates which have not been completed in accordance with the terms of the permission and enforcement action was taken, but was unsuccessful.

New requests for taking in charge of estates must be promptly assessed and then dealt with in accordance with the procedures set out below.

6.3 *Estates satisfactorily completed*

Where an estate is completed in accordance with the terms of the planning permission, it should be taken in charge without delay on foot of a request to do so, but not later than 6 months from the date of the request.

6.4 *Priority list for estates not completed satisfactorily*

A priority list should be drawn up of requests from residents for the taking in charge of uncompleted estates, taking into account such factors as the date of application, the condition of the estate and the length of time it has been left unfinished. New requests for the taking in charge of unfinished estates should be added to the priority list, as appropriate.

All unfinished estates which are the subject of a request to be taken in charge should be kept on this list, including estates where it may be possible to have the estate completed at the expense of the developer, through enforcement action or calling in the bond so that these estates remain on the priority list for remedial works by the planning authority in the event that enforcement action or calling in the bond fails.

6.5 *Action in relation to uncompleted estates*

Any of the actions already referred to that are still possible in terms of getting the estate completed other than at the expense of the planning authority should be pursued as quickly as possible. It is not acceptable that residents should have to continue to live in an unfinished estate for many years. When the estate is brought to a satisfactory standard it should be taken in charge promptly.

6.6 *Remedial works by the planning authority*

In accordance with section 180(2) of the Planning and Development Act 2000 and the guidance set out in this document, unfinished estates will have to be taken in charge where the majority of residents so request and it follows that where enforcement action or calling in the bond is not possible, or has been unsuccessful, the authority will ultimately have to complete such developments to taking in charge standard and sufficient funding should be provided from planning authority resources to enable this to be done. As stated above a priority list should be

maintained of all such estates and remedial works carried out in that order of priority.

#### 6.7 *Monitoring and review*

As part of the overall review and update of the local government service indicators, a new indicator in relation to the taking in charge of estates is being introduced from 2008 onwards (see appendix 4). This will provide benchmark data in 2009 for monitoring the taking in charge process, and in particular the priority being accorded by individual planning authorities to the taking in charge of unfinished or legacy estates.

## Sample Planning Conditions

### ***Condition in relation to standards***

“The development hereby permitted shall be carried out and completed at least to the construction standards set out in *[the planning authority’s Residential Site Development Standards document, the planning authority’s Taking in Charge Policy or the Recommendations for Site Development Works for Housing Areas 1998, as appropriate]*. Prior to commencement of development, the developer shall agree with the authority, in writing, the procedures for inspection and monitoring of the development by the authority to ensure compliance with these standards, and shall thereafter comply with the agreed procedures during the construction of the overall development. Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.

**Reason:** To ensure that the development is carried out and completed to an acceptable construction standard.”

### ***Condition in relation to vesting of the public areas***

“The open spaces shall be developed for, and devoted to, public use and shall be kept free of any development. When the development is being taken in charge, the public areas including open spaces that have been designated for taking in charge shall be vested in the planning authority, at no cost to the authority.

**Reason:** In order to ensure the proper development of the public open space areas, and their continued use for this purpose.”

### ***Condition in relation to security***

“Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company/bank, or other security to secure the satisfactory completion, and maintenance of services (including maintenance of services until taking-in-charge by the authority). The form and amount of the security shall be as agreed between the planning authority and the developer, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development.

If the amount of security required by this condition has not been lodged with the planning authority within 12 months of the date of this decision, the amount required shall be adjusted in accordance with an increase in the House Building Cost Index, which occurs between the date of this decision and the date on which the condition is satisfied.

**Reason:** To ensure that the development is carried out and completed to an acceptable construction standard.”



## Sample Bond Agreement

KNOW ALL MEN BY THESE PRESENTS that we:

\_\_\_\_\_

of \_\_\_\_\_

hereinafter called "the Developer" and

\_\_\_\_\_

(hereinafter called "the Surety") are jointly and severally bound unto

**THE COUNTY COUNCIL OF THE COUNTY OF FINGAL** (hereinafter called "the Planning authority") in the sum of € \_\_\_\_\_ to be paid to the Planning authority its Successors and Assigns jointly and severally by these presents.

SEALED this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

**WHEREAS THE** Developer has received Planning Permission (planning Register Reference No. \_\_\_\_\_ refers), a certified copy of which is annexed hereto, for the development of lands for house building at \_\_\_\_\_ and the planning permission has required security to be lodged with the Planning Authority for the carrying out and completion of the development in accordance with the said permission.

**NOW** the condition of the said Bond is that if the Developer shall carry out and complete the said development in accordance with the said permission or if on default by the Developer the Surety shall pay to the Planning authority the sum of € \_\_\_\_\_ then this Bond shall be null and void.

But otherwise it shall remain in full force and virtue until 2 years after the expiration of the planning permission referred to above and without prejudice to its own rights under the said Permission the Planning authority shall insofar as may be lawful permit the surety to perform the conditions and provisions of the said Permission which the Developer shall have failed to perform or observe.

No liability shall attach to the Surety under this Bond in consequence of any delay or damage directly or indirectly due or arising out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), Civil War, rebellion, revolution, insurrection or military or usurped power.

**THIS BOND** provides that all monies which become due and payable by the Surety under the Bond shall be payable and paid in the Republic of Ireland.

**IN WITNESS WHEREOF** the Developer has hereunto affixed its Common Seal and the Surety has caused this instrument of writing to be signed by its Secretary or Acting Secretary and one of its Directors and its Corporate Seal to be hereunto affixed the day and year first above written.

**CORPORATE SEAL** of (Developers)  
was hereunto affixed in the presence of:

-----  
DIRECTOR

SECRETARY Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2008

**CORPORATE SEAL** of (Surety)  
was hereunto affixed in the presence of:

-----  
DIRECTOR

-----  
SECRETARY

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2008

**Sample list of evidence to be produced by the developer to demonstrate completion of estate to the appropriate standards**

Evidence that all necessary way leaves for services are reserved forever in the transfer documentation to house purchasers.

Three copies of "as constructed" drawings (scale 1:500) of the development shall be submitted to the Council. The drawings shall indicate the following information:

- The estate boundary depicted in red, open spaces coloured green, all roads, footpaths and public lights.
- All services including water mains, valves, hydrants, sewers, road gullies, Telecom ducts/poles, ESB ducts/poles, cable link (NTL) ducts and all manholes. The invert and cover levels of all manholes shall be indicated relative to Malin ordnance. The gradients of all sewer sections shall be indicated on the drawings.

Test results duly certified showing output in litres per minute from all fire hydrants in the development

A CCTV survey/manhole survey completed at the developer's expense, of the collection systems as conditioned in the relevant planning permission. The sewers to be surveyed to be thoroughly cleaned out first and the CCTV Survey to be carried out using a camera which is capable of measuring distances from one manhole to another. The CCTV Survey report also to include a summary of any defects in the systems to be corrected by the Developer at his own expense.

A drainage layout plan of as-constructed sewers shall be submitted in electronic format showing a detailed survey of each manhole, sewer structure and a digitised layout of the as-constructed housing estate. The manhole survey and digitised layout of the estate shall be prepared to national grid co-ordinates. The invert and cover levels of the manholes shall be indicated relative to Malin ordnance datum.

### Local Government Service Indicator: Taking in Charge of Estates

Column A	Column B	Column C	Column D	Column E	Column F
The number of residential estates for which the planning permission has expired, in respect of which formal written requests for taking in charge (from residents or developers), were on hands at the beginning of the year.	Number of estates that were taken in charge in the year in question.	Number of dwellings in respect of column B.	% of estates in column A not completed to the satisfaction of the planning authority in line with the planning permission.	Number of estates in column D in respect of which enforcement action was taken in the year in question and/or the bond was called in.	Number of estates in Column D in respect of which works were undertaken by the authority to bring the estate to taking in charge standard.

#### **Definitions/Clarifications/Methodology**

*A residential estate means a development, which includes the construction of 2 or more houses (as defined in section 2 of the Planning and Development Act 2000 i.e. includes apartments and other dwelling units) and the provision of new roads, open spaces, car parks, sewers, water mains or drains.*

*“Permission has expired” means that the lifetime of the planning permission, including the period of any extension granted by the planning authority, has expired.*

*“Enforcement action” means the issue of a warning letter, an enforcement notice or the seeking of an injunction under section 160 of the Planning and Development Act 2000.*

*Where an estate would come into the category of Column E (i.e. enforcement action was taken and/or the bond was called in), but would also come within the category of Column F (remedial works were undertaken by the authority itself to bring the estate up to standard) it should be included under both Columns E & F.*